

Mental Health Parity: *Where's the final rule?*

Deadline: October 5, 2012



Dear Colleague:

The *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act* (MHPAEA) was signed into law in 2008. Although passage of MHPAEA was a critical step forward in achieving equity in medical and behavioral health benefits, a final rule has still not been issued on key provisions that will make MHPAEA fully operational.

As a result of the lack of guidance regarding final regulations from the administration, many individuals seeking care for mental health and addiction disorders are unable to access the services they need.

What will the MHPAEA law do when a final rule is issued?

- Requires certain group health plans (those with 50 or more employees) to provide comparable medical and behavioral health benefits. Individual policies are exempt from the law. There are two types of treatment limits that are subject to MHPAEA: quantitative and non-quantitative treatment limits
- Requires applicable plans to have the same day and visit limits, co-pay and deductibles (quantitative treatment limits) and apply cost containment techniques comparably (non-quantitative treatment limits - pre-authorization and utilization review) for the addiction/mental health benefit as the medical/surgical benefit covered by the plan

Why do we need a final rule?

- Health plans are applying pre-authorization requirements to mental health/addiction benefits that are not applied comparably to medical benefits covered by the plan
- Health plans are excluding residential treatment for substance use, mental illness and eating disorders
- Without a final rule plans are, and will continue, to refuse to disclose the medical criteria for making benefit determinations for medical/surgical benefits covered under the plan (i.e. if a patient cannot access the medical criteria used to determine benefit coverage and reimbursement, he/she cannot compare the criteria to the plan's behavioral criteria to determine if the plan is imposing these limits equitably and in compliance with MHPAEA)

Unfortunately, since MHPAEA was signed into law in 2008, health plans are continuing to impose more stringent limits on addiction/mental health benefits that prevent patients from fully accessing the benefits they were promised under their health plan. Please join the Addiction, Treatment, & Recovery Caucus in signing onto the letter below urging the U.S. Department of Labor, Health and Human Services, and Treasury to issue the final rule so that MHPAEA may be fully implemented.

To sign on or for questions, please contact **Melissa Gierach** with Congressman Sullivan's staff at Melissa.gierach@mail.house.gov or at 202-225-2211 or **Anne Sokolov** in Congressman Tim Ryan's Office at anne.sokolov@mail.house.gov or at 202-225-5261.

Dear Secretaries Solis, Sebelius and Geithner:

We are writing to inquire regarding the status of implementation and enforcement of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

We thank the Departments for releasing an Interim Final Rule in February of 2010 and subsequent sub-regulatory guidance. Unfortunately, because patients are still having trouble accessing mental health and addiction benefits, we urge the Departments to issue a final rule clarifying grey areas in the regulation and update Congress on the status of MHPAEA enforcement actions taken to date.

As healthcare costs rise, it is imperative we spend wisely. For example, illicit drug use costs America \$193 billion annually - over \$11 billion in health costs, \$61 billion in crime-related costs, and \$120 billion in lost workplace productivity. This far exceeds the annual direct and indirect costs of diabetes. In contrast, multiple studies have found \$1 invested in addiction treatment saves \$7, with the largest savings attributed to reduced crime and increased employer earnings. Only with full implementation and enforcement of MHPAEA will these savings be realized.

The Interim Final Rules released in February 2010 requested comments on areas such as “scope of service,” thereby leaving these issues unresolved. Specifically, patients and providers consistently report that plans continue to: exclude non-hospital based mental health and addiction facilities from coverage; eliminate vital types and levels of mental health and addiction treatments while covering the full continuum of treatments for medical conditions; manage mental health and addiction benefits more stringently than the medical benefits covered by the plan, and refuse to disclose the criteria used to make denials on comparable medical benefits. At its core, MHPAEA is about achieving equity between behavioral and medical benefits. Without requiring plans to disclose criteria used to make medical determinations, there is no basis for compliance testing. We applaud the Administration for sub-regulatory guidance in this area and hope you will actively enforce it.

The Government Accountability Office (GAO) released a report on May 31, 2012 which found that plans have increased the number of exclusions for mental health and addiction treatments since MHPAEA was enacted. For example, in plan years 2010 and 2011, 15% of plans surveyed excluded residential mental health and addiction treatment. In comparison, in 2008, 11% of plans surveyed excluded residential treatment. The purpose of this law was to increase access to addiction and mental health treatments, not to reduce access.

We ask the Departments to provide written responses to the following issues:

- When do the Departments anticipate releasing final rules clarifying these outstanding regulatory issues?*
- We also ask that the Departments provide an update on enforcement actions undertaken to date. While we understand voluntary compliance programs are often confidential, we ask that the Departments provide a report to us on enforcement actions the Departments have taken without disclosing specific plan names.*

- *Additionally, we understand guidance is forthcoming on the application of MHPAEA to Medicaid managed care plans. Can the Departments please advise regarding when such guidance may be released?*

Again, we thank the Departments for steps taken to date to implement and enforcement MHPAEA and we look forward to working with you to ensure that all Americans can fully access the benefits promised to them under the law.

Sincerely,

[Members of Congress]